From Barbara Levine

SB 1214 – Parole Appeals

What the bill would do

1. Add the AG to the list of parties who can appeal a grant of parole
2. Spell out the standard of judicial review of parole board decisions
3. In all cases of first and second-degree murder, first and second-degree CSC, first-degree child abuse and terrorism not causing death, require the board to:
    a. maintain "a complete record of all proceedings relating to a parole determination"
    b. include in the record "specific findings of the parole board regarding the prisoner's eligibility for parole" and "the factual basis for each of those findings."

Relevant authority

Macomb County Prosecutor v. Osantowski, 488 Mich. 952 (2020) (board did not abuse discretion when decision to grant parole was based on objective criteria and was within range of principled outcomes)

In re Parole of Michelle Elias, __Mich App __ (2011) (board did not abuse discretion when decision to grant parole was within range of reasonable and principled outcomes; trial court cannot substitute its judgment for board's or rely excessively on static factors, like crime, and fail to weigh rehabilitation)

In re Parole of Raymond Haeger, __Mich App __ (2011) (grant of parole reversed because no record of statutorily required psych evaluation or of program completion relied on in decision)

In re Parole of Philip Joseph Paquette, COA #301140 (unpubl., 11/29/11) ((board did not abuse discretion when decision to grant parole was within range of reasonable and principled outcomes; if prisoner has high parole guidelines score, board must extensively justify denial of parole, not grant)

Concerns

There is no evidence whatsoever that a problem exists requiring this legislation as a solution.

> Local prosecutors and victims, who have much more intimate knowledge of the cases than the AG possibly could, have the right to notice of parole grants and the opportunity to appeal them. Such appeals are fairly common. There is no basis for believing that these parties are not appealing in appropriate cases or that the parole board so regularly abuses its discretion that routine watch-dogging by the AG is needed to protect the public.
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> The standard of judicial review is fully defined in the case law. The bill would not change that standard. It is unnecessary for the legislature to tell the courts what they already know.

Adding the AG as a potential party will cause more appeals of parole board decisions. These will increase the workload of the board, the AG and the courts, as well as the costs for litigation and for incarceration. Prisoners will lose additional years of their lives while these appeals are being litigated.

> Given the standard of judicial review, parole grants will rarely be reversed on the merits.
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> The prosecutors lost in three of the four appeals cited. But Osantowski, Elias and Paquette each served roughly two additional years before being paroled, at a total cost to taxpayers of $210,000. Haeger, whose parole grant was reversed only for lack of adequate recordkeeping, may be paroled when next considered, but he has served nearly three additional years so far.

Notably, when the right of prisoners to appeal parole denials was eliminated, a major justification was the burden placed on the AG and the parole board to respond to a large volume of unsuccessful prisoner appeals. (See House Legislative Analysis of PA 191 of 1999, pgs 8-9.)

Parole appeals brought by the AG will create the unseemly situation where the AG will be simultaneously challenging the parole board's decision and defending it. While this may be permissible under ethical fictions about a "Chinese wall", it hardly inspires public confidence.

Proposed section 12 could impose new recordkeeping requirements on the board. A "complete record of all proceedings" may be interpreted to include a tape of the parole interview. (Past proposals to videotape parole interviews because they are so often the basis for board decisions were rejected because the MDOC has said that making, storing and retrieving videotapes would be too expensive.)

Proposed section 12 would definitely impose new requirements that the board make specific findings regarding the prisoner's eligibility for parole and set forth the factual basis for each finding. (Note that the use of the term "eligibility" is unclear: eligibility for parole is simply determined by service of the minimum; it has nothing to do with "suitability" for parole.)

This provision would directly contradict the opinion in *Paquette,* where the prosecutor argued that the board had failed to provide adequate justification for its decision. The Court of Appeals stressed that when people have high parole guidelines scores, the board needs to extensively justify parole *denials,* not grants.

There is already a statutory requirement that the board explain departures from parole guidelines. The proposed amendment would contradict the guidelines statute by requiring an explanation for parole grants that comply with the guidelines.

Notably, this would set greater requirements for the parole board than exist for trial judges who impose sentences within the sentencing guidelines.

The board makes 8,000-10,000 grant decisions a year. Records are preserved, but grant decisions have never been supported by detailed findings describing the board's reasons.

Requiring such findings in thousands of cases would be especially burdensome given recent reductions in parole board membership and support staff.

This provision would create a mare's nest of hyper-technical grounds for appeal as the AG combs all the parole grants in murder 2nd and CSC 1st and 2nd cases for the adequacy of articulation.

The result would be a chilling effect on board decision-making. Knowing that every decision to grant in these cases will be inspected by the AG for technical compliance, it will always be easier to deny release than to defend it.

Applying these rigorous provisions specifically to paroles in murder and CSC cases cannot be justified since a substantial body of state and national research shows that homicide and CSC offenders have the lowest recidivism rates of any offender group.